

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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ALBERT MEDINA,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS DIRECTOR, *et al.*,

Defendants.

Case No. 3:21-cv-00001-MMD-WGC
Ninth Circuit Court of Appeals No. 21-16606ORDER GRANTING MOTION TO
RECONSIDER DISMISSAL ORDER,
REOPENING ACTION, SETTING NEW
DEADLINE TO AMEND, AND REQUIRING
UPDATED ADDRESS

(ECF No. 16)

Pro se plaintiff Albert Medina brings this civil-rights lawsuit to redress constitutional violations he allegedly suffered while incarcerated at Ely State Prison (“ESP”). (ECF No. 7.) On July 28, 2021, the Court screened Medina’s First Amended Complaint, dismissing the Eighth Amendment sexual-assault claim (Claim 1) and First Amendment retaliation claim (Claim 4) with leave to amend by August 27, 2021, and dismissing the other claims without leave to amend. (ECF No. 9 at 17-18.) But Medina did not file a second amended complaint or otherwise respond to the screening order. So on September 7, 2021, the Court granted Medina’s application to proceed *in forma pauperis* and dismissed this action because he failed to file an amended complaint. (ECF No. 10.)

Medina timely appealed the dismissal order. (ECF No. 12.) Two weeks later, Medina filed a letter asking the Court to reconsider its dismissal order, arguing that neither he nor ESP’s law library received notice of the screening order. (ECF No. 16.) The Court construed Medina’s letter as a motion for reconsideration and denied it for lack of jurisdiction. (ECF Nos. 17, 18.) The Ninth Circuit has reversed and remanded for the Court to decide Medina’s motion for reconsideration in the first instance. (ECF Nos. 24, 25 (mandate).) The Court now grants the reconsideration motion on its merits and addresses other related matters.

1 **I. RELIEF UNDER RULE 60(b)(1)**

2 “Rule 60(b)(1) of [the Federal Rules of] Civil Procedure provides that the court may
3 relieve a party or a party’s legal representative from a final judgment on the basis of
4 mistake, inadvertence, surprise, or excusable neglect.” *Bateman v. U.S. Postal Service*,
5 231 F.3d 1220, 1223 (9th Cir. 2000). The Court dismissed and closed this action when
6 Medina failed to timely file a second amended complaint as directed in the July 28, 2021,
7 screening order. (ECF No. 10.) Medina asks the Court to reconsider its dismissal order,
8 arguing that neither he nor ESP received notice of the Court’s screening order setting the
9 deadline to amend. (ECF No. 16.) Medina supports his motion with documents showing
10 that ESP’s law library did not receive notice of the screening order. And it appears from
11 the Court’s records that the screening order was not emailed to ESP’s law library or
12 otherwise sent to Medina.

13 The Court thus finds that Medina has shown his failure to timely file an amended
14 complaint was the product of surprise. The Court therefore grants Medina’s motion for
15 reconsideration and relieves him from the dismissal order and judgment. The Court will
16 instruct the Clerk of the Court to reopen this action. And the Court will set a new deadline
17 for Medina to file a second amended complaint consistent with the findings and directions
18 stated in the Court’s screening order.

19 **II. MEDINA MUST UPDATE HIS ADDRESS WITH THE COURT**

20 The Court’s mail to Medina has been returned as undeliverable, stating that he is
21 now housed at High Desert State Prison (“HDSP”). (ECF Nos. 26, 28.) The Nevada
22 Department of Correction’s inmate database likewise states that Medina is housed at
23 HDSP. Medina is advised that Nevada Local Rule IA 3-1 provides that a “pro se party
24 must immediately file with the court written notification of any change of mailing address,
25 email address, telephone number, or facsimile number.” “The notification must include
26 proof of service on each opposing party or the party’s attorney. Failure to comply with this
27 rule may result in the dismissal of the action, entry of default judgment, or other sanctions
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1 as deemed appropriate by the court.” Nev. Loc. R. IA 3-1. The Court will grant Medina a
2 45-day extension of time to file his updated address with the Clerk of the Court.

3 **III. CONCLUSION**

4 It is therefore ordered that the motion for reconsideration (ECF No. 16) is granted.

5 It is further ordered that Plaintiff Medina has until December 8, 2022, to file a
6 second amended complaint consistent with the findings and directions in the Court’s July
7 28, 2021, screening order.

8 It is further ordered that Plaintiff Medina has until December 8, 2022, to file his
9 updated address with the Court.

10 The Clerk of the Court is directed to (1) serve this order on Plaintiff Albert Medina
11 at the address listed for him with the Court in the ordinary course; (2) electronically send
12 Plaintiff Medina courtesy copies of this order and the Court’s July 28, 2021, screening
13 order and attachments (ECF Nos. 9, 9-1, 9-2) by sending them to the electronic address
14 listed with the Court for High Desert State Prison’s law library; (3) send Plaintiff Medina
15 courtesy paper copies of this order and the Court’s July 28, 2021, screening order and
16 attachments (ECF Nos. 9, 9-1, 9-2) via U.S. mail, first class;¹ and (4) reopen this case.

17 The Clerk of Court is further directed to randomly reassign this case to a new
18 United States Magistrate Judge considering Judge Cobb’s retirement.

19 DATED THIS 24th Day of October 2022.

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23 MIRANDA M. DU
24 CHIEF UNITED STATES DISTRICT JUDGE

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¹ECF No. 9-1 exceeds 100 pages, so the Clerk of the Court will print it double-sided.